**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

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**ORDER**

**R.S.R.T.C. & Anr.**

**vs**

**Ramanlal & Anr.**

**S.B. CIVL WRIT PETIITON NO.1087/1994 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.**

**DATE OF ORDER : 18th Sept., 2006**

**PRESENT**

**HON'BLE MR.MOHAMMAD RAFIQ,J.**

Mr.B.S. Bhati, Advocate, for the petitioners.
Mr.G.C. Singhvi for Mr. Vijay Mehta, Advocate for the respondents.

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**BY THE COURT**: -

In this writ petition, challenge has been made to the award passed by the learned Industrial Tribunal cum Labour Court, Jodhpur (in short Labour Court) dated 19.6.1993. A reference

was made to the learned labour court on the question whether withholding of seven grade increments of the respondent-workman permanently by the management was illegal and justified and if not, what relief the workman was entitled to. The learned labour court by its award held that the stoppage of seven grade increments of the respondent-workman was not legal and justified.

Challenging this award, learned counsel for the petitioner Shri B.S. Bhati argued that while performing the duties of conductor in the petitioner-corporation's bus no.9731 on 4.2.1975, which was plying from Pokaran to Bikaner, the respondent-workman was found carrying six and half passengers without ticket. He was also found carrying three passengers without ticket in bus no.4967 on 27.2.1975 which was plying fro Bikaner to Phalodi. Notice was served on the respondent for his misconduct on 28.4.1975 and he made representation on 12.7.1975. The disciplinary authority upon inquiry concluded that the misconduct of the respondent-workman was found proved and, therefore, by order dated 28.7.1985, imposed penalty of withholding of two grade increments with cumulative effect. It has been argued that the respondent-workman was further found carrying five passengers without ticket in bus no.4215 on 10.7.1975 and he had in fact realized fare from four

passengers out of these five. A notice was also served upon him on 19.7.1976 and the respondent no.1 submitted reply on 25.7.1976. Finally, on this charge being found proved, the disciplinary authority imposed penalty of stoppage of one annual grade increment with cumulative effect and forfeiture of Rs.25/- as security amount by its order dated 28.7.1997. There was yet another misconduct committed by the respondent-workman on 18.9.1976 when he was found carrying four passengers without ticket in bus no.3751 from who he had realized bus fare but did not issue ticket. In this incident also penalty of two grade increments with cumulative effect was imposed upon the petitioner by order dated 1.12.1976. In regard to similar incident carrying one passenger without ticket in bus no.9226 on 17.4.1977, the respondent no.2 admitted his guilt voluntarily therefore,the disciplinary authority while taking lenient view, only issued warning to the respondent no.1. However, he was found guilty of carrying 12 passengers in bus no.4297 on 14.11.1977, which was plying from Phalodi to Osian, hence, the notice dated 2.12.1978 was issued to the petitioner by the disciplinary authority. The respondent-workman submitted reply on 30.12.1978. After the charge being found proved, the disciplinary authority imposed penalty of withholding of one annual grade increments with cumulative effect vide its order dated 28.9.1979. According to learned counsel for the

petitioner Shri B.S.Bhati, even though the inquiries conducted by the corporation were perfectly legal and justified, but as per the directions of the learned labour court, fresh inquiry was conducted before the learned labour court itself and the evidence was produced before the learned labour court on the question of fairness of inquiry. The tribunal found the charges having been proved against the respondent-workman yet held that the penalty imposed by various orders withholding in all seven grade increments of the respondent-workman was disproportionate to the gravity of charges.

Learned counsel for the petitioner has cited latest judgment of the Hon'ble Surpeme Court in the case of Divisional Controller N.E.K.R.T.C. Vs. H.Amresh reported in 2006 AIR SCW 3701 in which also dismissal on the charge of not issuing tickets to the passengers was held to be legal. It was also held that this was a misconduct of grave nature and further that the amount pilfered is petty, the dismissal of such employee is just and proper and the there was nothing wrong because the corporation lost faith in such an employee. The Hon'ble Supreme Court in the case while setting aside the judgment of the High Court affirmed the judgment of the labour court. The Hon'ble Supreme Court held that the reinstatement of the workman was erroneous being a case of gross misconduct. Learned counsel for the

petitioner also relied upon another judgment of the Hon'ble Supreme Court in the case of Regional Manager, RSRTC Vs. Ganshyam Sharma reported in (2002) 10 SCC 330 wherein their Lordships in somewhat similar circumstances held that act of bus conductor of carrying passengers without issuing tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. The judgment of the labour court directing reinstatement of the workman with continuity in service and back wages was held to be held illegal. Learned counsel for the petitioner thus prayed that the writ petition may be allowed.

On the other hand, Shri G.C. Singhvi, while supporting the judgment of the learned labour court argued that it was based on correct appreciation of the evidence and each of the penalty orders vis-a-vis the charges had rightly been held to be disproportionate to the gravity of the charges. It has therefore been prayed that the writ petition may be dismissed.

I have considered the argument advanced by learned counsel for the parties and perused the record.

The Hon'ble Supreme Court in the case of H. Amresh (supra) in similar circumstances held the order of dismissal to be

justified. In the judgment of Ghanshyam Sharma (supra), the Hon'ble Supreme Court while relying upon the judgment of Karnataka RSTC Vs. B.S. Kullikatti, (2001) 2 SCC 572 wherein it was held by the Hon'ble Apex Court that in such cases where the bus conductors are found carrying passengers without ticket or issuing tickets at a lesser rate than the proper rate, such acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on their part result in financial loss to the Road Transport Corporation and dismissal from service in such case was held to be appropriate remedy. In the present case, however, penalty of only stoppage of seven grade increments with cumulative effect was imposed.

In view of the aforesaid law laid down by the Hon'ble Supreme Court, the present writ petition deserves to be allowed. Accordingly the writ petition is allowed. The award passed by the learned labour court dated 10.7.1991 is set aside. There shall not no order as to costs.

**(MOHAMMAD RAFIQ), J**.

c.p.goyal/-